

AMENDMENT TO
AFFILIATED TEST BED
MEMORANDUM OF AGREEMENT
BETWEEN
THE RESEARCH AND INNOVATIVE TECHNOLOGY ADMINISTRATION
AND
[COLLABORATOR TO BE NAMED]

PURPOSE: The purpose of this amendment to the Affiliated Test Bed Memorandum of Agreement (MOA) is the clarification of language in the MOA, including a clarification of the obligations and responsibilities of all parties subject thereto.

AMENDMENTS: All parties subject to the MOA, by virtue of their signature hereto, hereby agree to amend the MOA as indicated below:

1. Section 5.1 is deleted and replaced with the following language. The amendments to this section clarify the party's obligations relating to sharing of proprietary or sensitive information or data when in written form or when shared in oral or visual form.

5.1 Marking or Labeling of Data. A party providing written Proprietary or Sensitive Information or Data under this Agreement shall mark, or label appropriately or otherwise identify any Proprietary Information or Sensitive Information that it furnishes to the other party prior to providing said Proprietary Information or Sensitive Information. If disclosed orally or visually, such Proprietary or Sensitive Information or Data will be reduced to writing by the Disclosing Party, clearly marked "Confidential," "Proprietary," or similarly, and transmitted to the Receiving Party within thirty (30) days after oral or visual disclosure.

2. Section 5.2 is deleted and replaced with the following language. The amendments to this section add a defined time limit beyond which the party's obligation to maintain in confidence any disclosed "Confidential," "Proprietary," or similar information is no longer binding.

5.2 Disclosure of Information. The parties agree not to knowingly disclose to others who are not a party to this Agreement, or make use outside of this Agreement of any Proprietary or Sensitive Data or Information belonging to the other party of this Agreement, provided that (1) the data is appropriately marked, labeled or identified, and (2) the data was obtained as a result of activities under this Agreement. Such markings necessarily include, but are not limited to, the data being marked as “Proprietary Information”, “Sensitive Data”, or “Sensitive Information.” The obligations of this section of this Agreement shall terminate five (5) years after the end of the term of this Agreement.

3. Section 5.5.2.3 is deleted and replaced with the following language. The amendments to this section attempt to clarify that the Collaborator is not under any obligation to file for patent protection on a Subject Invention, but where they do chose to file an application for patent, the Government acknowledges their ownership of the underlying Subject Invention and the obligation of Collaborator to provide the Government a nonexclusive, irrevocable, worldwide, royalty-free license to practice or have practiced on its, any foreign government’s or international organization’s behalf.

5.5.2.3 In those cases where a Subject Invention is developed solely by Collaborator, Collaborator elects to retain the entire right, title and interest to the Subject Invention and pursues patent protection on the Subject Invention, the Government hereby acknowledges Collaborator retains the entire right, title and interest to the Subject Invention. In such instance, Collaborator shall provide Government a nonexclusive, irrevocable, worldwide, royalty-free license to practice and have practiced the licensed Subject Invention for governmental purposes by or on behalf of the United States and by or on behalf of any foreign government or international organization pursuant to any existing or future treaty or agreement with the United States. Should the Collaborator elect not to retain the entire right, title and interest to the Subject Invention, Collaborator shall assign its entire right, title and interest to Government and Collaborator shall be entitled, upon election in writing, to an exclusive license in accordance with paragraph 5.6.2 herein.

4. Section 5.6.1 is deleted and replaced with the following language. The amendments to this section attempt to clarify that each party is responsible solely for certifying that its personnel, not both parties personnel, are unencumbered as indicated.

- 5.6.1** Each party to this MOA, by its representative's signature at the end of this MOA, certifies that to their best knowledge and as of the effective date of the MOA, its personnel are not encumbered by any assignment of title/ownership, royalties, and/or of any other right that would bear upon or affect any title/ownership, royalties and/or any of the rights granted within this MOA.
- 5.** Section 5.8.2 is deleted and replaced with the following language. The amendments to this section attempt to clarify that the Government's examination of any proposed publication is to insure against the unintended or inadvertent release of Confidential or Proprietary Information within the publication, including the Subject Data. It is not a prohibition against publication.
- 5.8.2** Prior to submitting for outside review any manuscript that contains Subject Data or results of research and/or development under this Agreement, the Government shall be offered a reasonable opportunity to examine such proposed publication. If no such outside examination is sought, made, or obtained, the Government will be offered a reasonable opportunity to review such proposed publication before Subject Data is published.
- 6.** Section 5.8.4 is deleted and replaced with the following language. The amendments to this section attempt to clarify that the Government's right to publish the work developed under the MOA includes not just the work performed by the Government, but also that which is performed jointly with Collaborator.
- 5.8.4** Notwithstanding rights granted to Collaborator elsewhere in this Agreement, Government may submit for publication the work developed by the Government, or jointly with the Collaborator under this Agreement. Depending on the extent of contributions made, Collaborator Personnel may be cited as co-authors. In the event Government wishes to submit research and/or development results for publication, before publication, the Government will notify Collaborator's MOA Manager. In no event, however, shall the name of Collaborator or any of its trademarks and/or trade names be used in any publications without Collaborator's prior written consent.
- 7.** Section 9.6 is deleted and replaced with the following language. The amendments to this section grant a broader right to all parties to disseminate the research results of

the efforts conducted under this MOA, subject to the examination provisions of Section 5.8.2, without a prior written agreement, but instead by prior written notice.

9.6 Dissemination of Research Results. With prior written notification, either party of this MOA may present the results of this MOA to the public. Such notification and the required examination provision of Section 5.8.2 of this Agreement is intended to protect against release of Sensitive Data or Information or Proprietary Information, the release of which could cause harm to the Government's and/or the Collaborator's interests. Any such presentations shall be subject to the Use of Name or Endorsements provisions of Section 9.5 of this Agreement.

IN WITNESS WHEREOF, each individual signing this document represents that s/he has the authority to execute this Amendment to the Affiliated Test Bed Memorandum of Agreement on behalf of her/his respective agency, or business, and each such individual have set forth her/his signature and executed this Amendment in duplicate:

FOR THE COLLABORATOR:

DATE

NAME:

Title:

Phone Number:

[Please use corporate seal. **If no corporate seal, please obtain notarization**]

On this day, [] appeared before me, presented sufficient identification or is personally known to me, and set forth his hand this _____ day of _____, ____.

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Notary Public

My Commission Expires:

FOR THE GOVERNMENT:

United States Department of Transportation
Research and Innovative Technology Administration (RITA)

DATE

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